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08/13/1997

Re: CC Docket 95-155/FCC No. 95-419 Toll Free Number Replication

Bill Caton  
Secretary of the Commission  
1919 M St.  
N.W., Washington, D.C. 20554

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Geri Matise  
Network Services Chief

**Exparte Letter:**

I was told by Robin Smolen that I may submit the following proposed solution to the toll free number replication issue as an exparte letter. Following Robin's suggestion, I am doing so. However, the dictionary implies that the nature of an exparte response **is one sided and partisan**. I must go on record as stating that I regret this tag as the proposed solution uses the basic underlying principles of the Constitution of the United States of America along with the basic underlying principles of the Federal Communications Commission's mission statement in order to arrive at a just solution that benefits the economy, protects the consumer and serves the public interest.

Through the eyes of the consumer, through the eyes of the intellectual property owner, through the eyes of the FCC, through the eyes of the vanity telephone number entrepreneur I have viewed the problems in our toll free industry that are 1) obstructing healthy competition, 2) preventing consumers from deriving benefits that they were meant to derive, and 3) preventing consumers from deriving the benefits that they have every right to derive.

The solution can only be one that encourages competition, promotes economic growth, and protects the consumer **while promoting the efficient, fair and orderly allocation of the toll free number supply**.

Regarding the issue of number duplication:  
I WRITE,

The problem exists because some companies have intellectual property rights in their toll free numbers. This was poorly anticipated by those who initially conceived toll free service, otherwise there would have been measures to deal with issues of replication from day one. However, the replication issue is now obstructing the fair and orderly allocation of toll free numbers. It is also preventing economic growth, restricting competition and preventing consumers from deriving benefits, **yet these are the top goals of the FCC and the top economic goals of the Constitution**. I propose a solution to this issue that uses the basic underlying principles that govern the Constitution and that govern the FCC.

In order to arrive at a just solution, we must first analyze how intellectual property rights can stem from toll free numbers. To begin with, **the 1-800 exchange has clearly become a brand**. Why is this so? Because people both consciously and unconsciously use **1-800 to identify a particular number as being toll free**. Thus, companies using 1-800 vanity numbers, and even some compa-

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nies using 1-800 numeric toll free numbers feel they have been making an investment in a brand, and therefore have a right to protect their investment from infringement. **These entities have every right to feel this way.** However, in openly recognizing that their toll free numbers represent powerful brands *worthy of protection from infringement*, many of these companies have **failed to realize what makes a brand successful in the first place.** Anyone familiar with positioning theory (popularized by Al Ries and Jack Trout in *Positioning, 1981, 1986 McGraw-Hill Inc.*) will know that the power of a strong brand is derived **by being FIRST into the mind of the prospect with a specific product or service, not second or otherwise.** If a brand is successful in being first into the mind of the prospect, and thus becomes the first brand to stand for a given product or service, the battle has already been won. Why is this so? Because consumers only have room in their minds to store a limited number of brands for each product or service category. Furthermore, consumers store these brands in order of preference which **dictates market share.** Therefore, if a brand is first into the mind, and becomes synonymous with a given product or service, it is almost impossible for a competitor who comes along afterwards to dislodge it. Think of **Coke, IBM, Kleenex, Xerox or McDonald's** to name a few. In the mind of the public Coke means cola, IBM means computer, Kleenex means tissue, Xerox means copier and McDonald's means fast food, because these brands were the first to carve out these specific positions, standing for these product/service categories. As a result, **they own the position in the mind of the public.** This is why such brands enjoy leads over their next largest competitor. Coke is ahead of Pepsi, IBM is ahead of Macintosh, and McDonald's is ahead of Burger King. It is likely to stay this way for quite some time. Why? Because in the mind of the prospect, these weaker brands are stored **second on the product list.** For the third or fourth brand in a given product category, just being remembered by prospects at all can be quite a task.

**At this point one may be wondering what this all means for newer brands who wish to compete "head to head" on the same level with the brand that owns a given position.** The answer does not bode well for the newcomer. In the mind of the prospect, anything else becomes an imitation of the first... and thus for our examples we would have imitation cola, imitation computers, imitation tissues, imitation copiers and imitation fast food. **Therefore, based on positioning theory I submit that 1-800 means toll free in the mind of the public because 1-800 was THE FIRST TOLL FREE BRAND to successfully carve out this position in the mind of the public.** 1-800 is like the "Coke" in Coca Cola, the "IBM" in IBM Computers and the "Kleenex" in Kleenex Tissues. Who is the leading florist in the country? FTD right? But when it comes to consumers who dial for flowers off the top of their head... 1-800-FLOWERS is the leader. **1-800-FLOWERS means toll free, easy to remember, dial off the top of your head flowers.** They **own this position** in the mind of the public. 1-888-FLOWERS would be an imitation because 1-888 is a copy of the original and thus a weak brand compared to 1-800. 1-877 will be even weaker! 1-800-FLOWERS has more to fear from substitute products like fruit baskets than from weaker brands of imitation toll free flowers like 1-888 or 1-877. Therefore I must ask, **would the Coca Cola Company be able to prevent a competitor from using the word cola in their product? Would IBM be able to prevent a competitor from using the word computer in a product?** Of course not. Because these are the generic terms protected by the Federal Government. If the leading companies were allowed to own the generic terms, it would be anti-competitive and against all fair trade laws. Imagine telling Pepsi to take the word cola off their can! Or imagine telling Macintosh to take the word computer off their box! **I therefore submit that "flowers" is also a generic term like computers or cola that cannot be branded in itself. If courts have**

ruled otherwise, they must reconsider. It is *the 1-800 brand combined with the word flowers that makes 1-800-FLOWERS so special*. This is what 1-800-FLOWERS is entitled to protect, this is their intellectual property.

Therefore, I submit that 1-888-FLOWERS is clearly not 1-800-FLOWERS because 1-888 is a different brand than 1-800... and that makes 1-888-FLOWERS a different phone number. Not only that, but 1-888-FLOWERS is a considerably weaker brand and a weaker phone number compared to 1-800-FLOWERS because it owns **no independent position in the mind of the public. It is an imitation of the first.** There is little room available in the mind of the public for such imitation brands. It is much easier for the public to simply accept what's already stored in the mind, "1-800-FLOWERS," than to go through the process of replacing it with 1-888-FLOWERS or 1-877-FLOWERS. It will take a long time for these weaker brands (of numbers) to have a chance of catching up, if it even happens at all.

Not only does The 1-800-FLOWERS brand stick out in the mind of the public, but 1-800-FLOWERS has already enjoyed the lead time necessary to set up invaluable relationships with local florists, successfully carving out a huge network that has little to fear from weaker, **imitation brands like 1-888 or 1-877**. By the time brands like 1-888 and 1-877 are viewed on the same plane as 1-800, (if it even happens at all), a company like 1-800-FLOWERS will have made so much money and grown to such a large capacity that such copycat competitors will be of little concern. **I submit that companies who think they have valuable toll free numbers have little to fear from "me too" competitors, because their number has had "the all important opportunity" to carve out a unique position in the mind of the public without the presence of competing brands of numbers.** The 1-800-FLOWERS case has been overstated and the public and the FCC bought into it, although no-one is to blame. However, in the interest of fair and healthy competition, all companies deserve the chance to get the 1-888 or 1-877 version of a number, **otherwise the FCC is not fulfilling its role of promoting growth, encouraging competition, serving the public interest and protecting consumers.** By giving a company like 1-800-FLOWERS the duplicate number, potential growth of another company in the economy is cut off (this would be like having Coca Cola without Pepsi Cola, RCA Cola, Jolt Cola or any other weaker brand of cola). This limits competition and exposes the consumer to higher prices. Therefore, the number supply would be depleted in such a way that **does not allow consumers to access the potential benefits of the toll free number.**

Therefore, it has been shown that **1-888-FLOWERS is a different number from 1-800-FLOWERS because 1-888 is a different brand than 1-800, and flowers is a generic term that needs to be protected by the Federal Government.** Thus, numbers like 1-888-FLOWERS and 1-877-FLOWERS are not infringements upon intellectual property rights owned by companies like 1-800-FLOWERS who do not own the rights to the word or phrase that their number spells. No-one can blame 1-800-FLOWERS or others for trying to protect themselves the way they did, but little protection is needed by a giant trying to stop an ant that has crawled up onto his foot **from somehow making it all the way up its body to its head.**

However, there may be other cases in which an entity does have intellectual property rights in what a given number spells. In other words, the entity has been given credit for coining or *inventing* a word or phrase, and they have the use of the 1-800 number that spells this word or

phrase... or they have intellectual property rights in a word or phrase and do not have the use of the number but wish to block another entity who does have the use of the number from advertising the number as such. For example, if Coca Cola had the number 1-800-COCA COLA, they would most likely want to duplicate the number in any other toll free exchanges... Furthermore, if Coca Cola did not have the 1-800 number, they would want to prevent the entity that does have it from using it to spell COCA COLA. **However, in either case, the number (not currently in the hands of Coca Cola) may also be used to spell other words or phrases besides Coca Cola, and therefore could very well be used by other entities without raising concerns of intellectual property rights. Furthermore, the number could also be used numerically by other entities without raising similar concerns. Therefore, it would still violate the public interest to allow for these entities to duplicate their number without the number first being available on an equitable basis to the public.**

Note\*\*\* If Coca Cola had the number 1-800-COCA COLA and had trademarked this number (the combination of 1-800 with Coca Cola), and another company acquired the number, 1-888-COCA COLA, and chose to advertise it as such, one may still have to question whether or not 1-888-COCA COLA would be an infringement upon the Coca Cola name or the 1-800-COCA COLA trademark. What is special in this case is the branded phrase COCA COLA and the combination of the 1-800 brand with the branded phrase Coca Cola, but by combining another word with it... or in the case of 1-888, combining a different brand... does it not change the meaning altogether? Surely it is true that consumers may be confused, but 1-888-COCA COLA is no more Coca Cola or 1-800-COCA COLA than the term **Chicken Feed Coca Cola**. **However, such issues need to be decided by the court system and has NO IMPACT ON THE ISSUE AT HAND.** In cases where a coined name is involved, it is a violation of the public interest to allow for these entities to duplicate their number without the number first being available on an equitable basis to the public for the reasons already mentioned above.

**I therefore submit that any entity in possession of “a duplicate number” without the number first having been “knowingly available on an equitable basis” to others, is in violation of antitrust laws.** Therefore, in the interest of promoting fair competition and protecting the consumer, no entity can ever again be given a duplicate toll free number in another toll free exchange that has been designed for the identical toll free service without the number first being available to the public on a first come-first serve basis. This would be **DETRIMENTAL DEPLETION** of the number supply as opposed to **HEALTHY DEPLETION** which I will outline next.

**At this point I would like to tackle another issue in the toll free industry which has been dealt with in a way that violates the rights of every consumer in the United States.** The FCC took the position that **“the hoarding of numbers” prematurely depletes the number pool.** But given *enough growth* in our economy the number pool would eventually deplete itself without the aid of hoarding. However, The FCC feels that the fewer toll free exchanges opened the easier it will be to *justly deal* with their existence. **The FCC has every right to feel this way.**

However, we must examine the original purpose for creating toll free numbers. Toll free numbers were created to bring stimulation to the economy by offering companies a way to *educate consumers as to the benefits of their products and services* without it costing the consumer the cost of the call to do so. **This is why toll free numbers are toll free...** Therefore, it is the depletion of toll

free numbers from the number pool that allows for this mutually beneficial relationship between business and consumer to occur. However, the FCC Second Report and Order, FCC 97-123 has not acted in this interest, because it holds the position that the toll free number supply is a public resource that must be preserved... but it holds this position **at the expense of the economy, at the expense of consumers' rights to access certain benefits (which will be detailed), and it holds this position at the expense of encouraging competition.** While it is logical to try to preserve the number supply, it is highly illogical to do so at the expense of the aforementioned. Why? Because these are the underlying **economic goals, economic aspirations and economic directives of the Constitution of the United States and of the Federal Communications Commission.**

In its simplest form, the FCC recognizes that **the toll free market** is made up of an end user's request to subscribe to toll free service, followed by the depletion of a toll free number from the supply in order to serve this need. **However, markets have a way of leading to sub-markets, especially when value can be added to the products or services as they pass through the sub-markets.**

How can value be added to a product as it passes through a sub-market? One way to add value is **by introducing a product enhancement**, another way is **by increasing the speed of delivery of a product or service.** Toll free numbers have had value added to them in both of these ways. For one, *an enhanced number* spells something memorable and identifiable about a particular business, enabling the business to receive more calls per ad, and thus enabling it to maximize its advertising dollar. Such numbers have been called vanity numbers. With vanity numbers, the consumer benefits too. Consumers enjoy all of the standard benefits of toll free service, but also gain added benefits. For example, **a vanity number can save consumers the time it takes to write down or look up a number.** This constitutes *increased speed of delivery* as in many instances consumers are not in the position to write down a number when they wish they could, *i.e.*, the radio ad goes by too quickly, or a billboard is viewed while driving 60 miles per hour down the highway. **Furthermore, consumers who are able to remember a vanity number off the tops of their heads can save the cost of calling information to get the number.** This is enhanced value and increased speed of delivery. Therefore, it can be concluded that vanity numbers offer a true, added value to the economy helping to *increase the flow of business, bringing more benefits to consumers and giving the companies who use vanity numbers a new dimension to compete with.*

If a company does not know enough itself to secure a possible vanity number from the number pool, an outside party may see it as an opportunity to create value in the economy. The outside party acquires the number, and then adds value to the number by **educating the targeted company as to what the number spells and further educating the targeted company of the many benefits of operating with such a number.** This outside party then attempts to sell the value he or she has added to the number to this or any other targeted company. Who are these outside parties who endeavor to step in between service provider and end user to add value to the economy? **They are vanity telephone number entrepreneurs.**

Contrary to petitions I have read from vanity telephone number entrepreneurs that were directed to the FCC, the selling of toll free numbers DOES HAVE AN EFFECT ON THE NUMBER SUPPLY. In these petitions, vanity telephone number entrepreneurs have tried to mask many of

the ways in which the private exchange of a toll free number can occur. But in order to fully understand how such activity effects the supply of the numbers, we must examine the underlying economic principles behind such occurrences. First of all, **I submit that vanity telephone number entrepreneurs do have a knack for seeing available numbers in the number pool that could help a certain company or a certain class of company do more business.** Clearly the targeted company is unaware of the number or else it would have already retained the number on its own. So the vanity telephone number entrepreneur sees an opportunity to add value to the economy and thus reserves, or establishes service with the number in the hopes of making a sale that benefits **the marketer who will buy the number, the consumer who will dial the number and of course the vanity telephone number entrepreneur who has added value to the number.** However, as in any business, it may be difficult to judge when a certain project will pan out. Therefore, in order to protect against extended holding periods or outright failure in selling a particular number, the vanity telephone number entrepreneur reserves as many numbers as possible (*that he or she thinks will have value to other businesses*) in order to maximize the use of his or her own time. **This scenario clearly shows that “allowing numbers to be held for sale encourages hoarding.”** Therefore contrary to aforementioned petitions, the number supply is depleted.

#### **BUT IS IT HEALTHY OR UNHEALTHY DEPLETION?**

In other words, does the depletion of a number from the number pool that is *held for private sale* work to serve the prime directives of the Federal Communications Commission and the underlying economic principles of the Constitution of the United States of America?

Before this question can be answered, one may already be tempted to argue that a company targeted by a vanity telephone number entrepreneur MAY HAVE eventually secured the number from the number pool on their own. In other words, they would have figured out that the number exists, and known that it could help their company do more business, and thus would have requested it from the number pool... Therefore making the activity of the vanity telephone number unnecessary because it takes advantage of the targeted company. **However, one must consider that it is impossible to tell when any number will be depleted from the number pool. Numbers can be randomly assigned to users at any given moment.** Such an occurrence could prevent this company's chance of ever benefiting from the number's use. Therefore, it can be stated that **part of the value added to the number by the vanity telephone number entrepreneur is actually insurance against another entity acquiring the number for its own private use during the time that the targeted entity is either unaware of the number's existence or during the time that the targeted company is merely forgoing the opportunity to get the number because it has chosen to spend time doing something else first... hence an opportunity cost.** While some may find it distasteful to buy insurance of this nature, there is no question as to the validity of such insurance services in the economy. In other words, this “insurance” clearly works to ensure that the targeted company has a higher chance of gaining the use of a particular number that can help its business do more business. Furthermore, I have already shown that a private sale of a number *that has had value added to it by a vanity telephone number entrepreneur* meets FCC goals because it **gives the acquiring business a new way to compete, it gives consumers new benefits to access, and it stimulates growth in the economy...** it also generates taxable income for the Federal Government--at the hands of the value added income derived by the vanity telephone number entrepreneur.

**In the private sale of a number (that has had value added to it), there is clearly a period of time in which it is not in use to serve the FCC's goal of benefiting the economy... nor is it in the pool of available numbers.** This time period is what the FCC calls "hoarding." However, we must examine the basic function of adding value by way of product enhancement in our economy to determine whether or not this activity really undermines the goals of the economy or the goals of the FCC. In many instances when value is added by product enhancement in our economy, **there may be a period of time when the product is not available to the end user.** Why? Because value is being added to it. For instance, when a car is being manufactured, it may reach a stage where it is actually drivable, and thus saleable. However, another company may step in and add a rust proof coat as the car passes through the system. Only after this value added step has been completed will the car reach the end user. **Is this any different from the time it takes a vanity telephone number entrepreneur to add value to a toll free number by educating a targeted company as to its existence and benefit of use? I submit that it is no different.** I submit that to all of the parties involved; (the business, the consumer, and the vanity telephone number entrepreneur), what the FCC calls hoarding is actually the time it takes the vanity telephone number entrepreneur to add value to the toll free number. It is therefore no different than the time it takes an outside party to "rust proof a car" before making it available to the end user. **However, in light of this the FCC currently holds the position that toll free numbers are a public resource and therefore are not a tradable commodity...** but I have just shown that the vanity telephone number entrepreneur is not trafficking in toll free numbers, but **only trafficking in the value he or she has added to the number... not making any profits from the original service the number is intended to provide.** Can the FCC really prohibit people from trafficking in "added value?" If they can, our economy and the very fundamentals of Capitalism in our economy are in danger.

Consider Regional Bell Operating Company Nynex who charges \$6.23 a month for "gold numbers" that are easy to remember. Is Nynex charging different prices for different grades of numbers? Or is Nynex charging for the value added service of taking "the extra time" to search the local number database for desirable numbers? **I submit Nynex is charging for a value added service and therefore is not trafficking in a non tradable commodity.**

**Therefore, the holding period that a vanity telephone number entrepreneur engages in when adding value to a toll free number before the sale of such value constitutes HEALTHY DEPLETION because it promotes economic growth, encourages competition, benefits the consumer and provides income tax revenue for the Federal Government... all FCC prime directives and all U.S Constitution economic directives.** This answers the above question of whether or not the depletion of a number held for private sale is healthy or detrimental to the economy. Therefore, the FCC's CC Docket 95-155 Second Report and Order FNPRM FCC 97-123 is against the public interest because by preventing the private exchange of a number (the private exchange of value that has been added to a number), it holds back new ways for businesses to compete, it prevents consumers from deriving new benefits, and it prevents the economy from being stimulated, etc... all goals of the FCC. **The FCC claims that the depletion of numbers is detrimental to the economy because numbers are a public resource. Quite the contrary! The depletion of numbers is only detrimental to the number supply.** But it is the depletion of numbers from the number supply that is meant to serve the economy in the first place and thus is in the public interest. Toll free numbers are a public resource that need to be used, not preserved at the

expense of the economy.

I now show another way that the vanity telephone number entrepreneur provides value to the economy by trafficking in the value that he or she has added to a toll free number. **Shared use programs allow a virtually unlimited amount of end users to benefit from THE USE OF JUST ONE NUMBER**, thus helping to offset the depletion of numbers from the number pool. This is a way to maximize the effectiveness of a particular toll free number, something the FCC wants to know how to do. In theory, **this could even reverse some instances of phone number depletion**. How? Local companies who might have subscribed to their own toll free number, are now given a more profitable alternative. They can share in the use of a vanity number, gaining the rights to advertise and use the number within their specific market area. If the number of shared users is greater than the amount of numbers inventoried by the vanity telephone number entrepreneur, then the supply of numbers is positively benefited without holding back the economy. This is a highly probable scenario considering that the number of shared users per a given phone number could be equivalent to the number of area codes in the U.S. **Numbers can even be broken up further**, by allowing local businesses to use the number within the area covered by their local phone directory. The FCC could help promote such programs since it would help to maximize the effectiveness of toll free numbers, and benefit the economy as well as the individual consumer. Once again, taxable income is generated for the Federal Government and the wheel keeps turning. All of this is in line with the FCC's mission, "...encourage competition in all communications markets and to protect the public interest..."

Further helping to offset depletion is the **no duplication policy I have outlined**. This policy also helps to restore healthy competition even though businesses who branded their 1-800 numbers so long ago in the mind of the public will hardly be scratched by the potential new competition.

If the FCC is still not convinced why it cannot prohibit the private sale of numbers, perhaps a closer look at the Second Report and Order, FCC 97-123 is needed. **In this order, the FCC dug itself two holes that go against everything the FCC stands for**. However, the FCC cannot be blamed because they were clearly trying to act in the best interest of the public.

The FCC declared that **"hoarding occurs when a toll free subscriber acquires more numbers from a RespOrg than it intends to use for the provision of toll free service."**

Yet the FCC also declared that **"routing multiple toll free numbers to a single subscriber will create a rebuttable presumption of hoarding or brokering."**

How can this be? What if the officers of a company have decided that a certain two year business plan is only worth pursuing if they can get a certain telephone number to market their idea with? **I submit that this business would want to secure that specific number from the number pool if they saw that it was available**. I submit that this business may be fortunate enough to discover that the number is available, therefore they reserve it for the 45 day period. However, after the 45 day reservation period passes, this business must either establish service with the number, or lose it! This company has a business plan, so they establish service and route the number to their local telephone number to which **another toll free number already rings to**. I would like to know, **does this represent intent to use the number? Or is this the rebuttable presumption of**



**hoarding?** Is this situation healthy for the economy? Does it serve the public interest?

What if the company interprets the law to mean that holding the number is a violation of FCC order, and thus they abandon their business plan? The economy misses out on this would be service, consumers miss out on potential benefits, the Federal Government misses out on potential income tax revenue, **BUT THE NUMBER SUPPLY IS PRESERVED.** I submit this is not the way the Constitution of the United States intends for our country to proceed. Now let us examine another possible scenario. The company interprets the law to mean that they do have an intent to use the number, so it's acceptable for them to hold it while they implement their business plan. Along comes the FCC, who takes the number away using the rebuttable presumption of hoarding. **Should this company lose the number? Should its officers be subject to fines or jail time? Should the economy miss out on the potential benefits that the business might have offered? Should consumers miss out on the ability to call this company's number off the tops of their heads to get free information about their goods and services?** Should the Federal Government miss out on income tax revenue that this business venture could have generated? Of course not. **BUT AT LEAST THE NUMBER SUPPLY IS PRESERVED!**

This is the consequence of putting the number supply before the economy. If the FCC holds that the depletion of numbers is more detrimental to the economy than either of the two scenarios I have just laid out, then the FCC is clearly not acting in the interest of the economy, nor is it encouraging competition, nor is it acting in the public interest, and it is certainly not acting in the best interest of itself! **Therefore it is in violation of Section 201(b) of the Communications act,** "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." **I submit that it is unjust and unreasonable for the FCC to not act in the best interest of the public, or itself.**

**I once again submit, that depletion of numbers is in the public interest and therefore is not detrimental to the economy,** it is only detrimental to the number supply... which was meant to be depleted in the first place in order to benefit the economy. **I also resubmit that the preservation of the number supply IS DETRIMENTAL to the economy,** except in cases where an entity is not allowed to duplicate a number without it first being available on an equitable basis to the public.

I will now expose the second problem in the Second Report and Order. The FCC states that **"the sale of a toll free number by a private entity for a fee, is contrary to the public interest in the conservation of the scarce toll free number resource and contrary to the FCC's responsibility to promote the orderly use and allocation of toll free numbers."** I have already shown that this is not the case, because it is the depletion of numbers itself from the pool that serves the FCC's primary directive of promoting economic growth, encouraging competition, and protecting and benefiting the consumer. Every scenario I have laid out including the private sale of value that has been added to a toll free number by a vanity telephone number entrepreneur clearly qualifies as "orderly use and allocation," because the economy is stimulated, consumers benefit, and competition is encouraged. Therefore, restricting business in an effort to preserve the number supply would qualify as **DISORDERLY USE AND DISORDERLY ALLOCATION OF NUMBERS.** Why? Because once again it is disruptive to the economy to preserve numbers at the

expense of holding back economic activity. I have already shown that what is beneficial to the economy may be disruptive to the number supply... but it is the purpose of the number supply to benefit the economy. I have also already shown that what may be beneficial to the number supply, is detrimental and disruptive to the economy. **So which is it America? Should the FCC be more concerned about preserving the number supply? Or should the FCC be more concerned about encouraging competition, stimulating the economy, and protecting and benefiting consumers, and generating taxes for the Federal Government?**

**Since prohibiting the private sale of a number and the hoarding of a number can only preserve the number supply at the expense of the economy, I submit that preserving the number supply in this way is not in the public interest.**

I submit the following scenario to further show that disallowing the private sale of numbers to preserve the number supply is not in the public interest.

Company A buys company B. **Among the assets acquired by company A in the transaction is company B's toll free number...** the key to most of company B's leads. What makes this number the key to most of company B's leads? It's clearly the fact that company B has been using it for years. It is tattooed all over their ads, promotions, and marketing pieces, all of which are circulating through the economy and are in the hands of prospects. Their number might even be **carved into the minds of some customers and prospects...** especially if it spells something memorable and identifiable about their business. Can the FCC step in and blow the whistle? Did a sale of a number occur in this private sale of one company to another? If the FCC were to say that this was a violation of law, the whole economy would miss out on all the benefits of such a transaction. But if all one needs to do in order to sell a number is to **establish a business, place an ad, and then sell the business... how can the FCC stop anyone who knows how to incorporate a business and who wants to sell a number... or as I have already pointed out, anyone who wants to sell the value they have added to a number?** Could the FCC prosecute in either of these scenarios? **Could the FCC distinguish between either of these occurrences?** Could anybody? Is this how the FCC should spend its resources? Is the prevention of such activity in order to preserve the number supply in the public interest? Clearly the answer is no.

In either case, the economy would be held back, because the "acquiring business" cannot obtain the number that can make their business more competitive. Therefore, the consumer cannot call this easy to remember toll free number to access information about the company's products and services, thus possibly saving the cost of calling information, amongst other value added benefits. **Therefore, I once again submit, that the depletion of numbers is in the public interest. It is not detrimental to the economy, but only detrimental to the number supply... which was meant to be depleted in the first place to serve the economy.** How else could the purpose of the number supply be served?

Thus, contrary to the Second Report and Order CC Docket 95-155, the underlying **FREE MARKET FORCES** of the toll free industry work to meet the FCC's primary directive of "encouraging competition" and "protecting the public interest," and in some instances the free market forces actually help reverse number depletion. Considering the combined positive effects of shared usage and a no duplication policy on the number supply, it may even be possible to delay the

opening of the new 1-877 exchange for quite some time. This in turn could give the 1-888 exchange half a prayer in competing with 1-800. 1-888 has many years to go before it will be recognized as the brand 1-800 has become... if it ever happens at all.

*I can be reached for comment at (609)-497-0713 or email [jlerman@juno.com](mailto:jlerman@juno.com).*

Joshua Lerman,

A handwritten signature in cursive script, appearing to read 'Joshua Lerman', with a long horizontal flourish extending to the right.

Citizen of the United States of America

“using basic underlying principles to find ***equitable solutions*** to problems of human importance”